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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2639 OF 2006
IN
SUIT NO.3429 OF 1991

Oshiwara Land Development
Company Pvt.Ltd. and others Plaintiffs

versus

State of Maharashtra & others Defendants

Mr.Aspi Chinoy, Sr.Adv. a/w Mr.Kanade i/by Mahimtura & Co. for plaintiffs.

Mr.G.W.Mattos, AGP for defendants.

CORAM : A.M.KHANWILKAR, J.

DATE : 22nd August 2007

PC :

1. Heard counsel for the parties. Perused relevant records and pleadings on record. For the nature of order that I propose to pass, it is not necessary to advert to all the events that has led to filing of this motion.

2. Suffice it to observe that this Court has passed interim directions in terms of order dated 23rd April 1997 in Notice of Motion No.84 of

1992. It is not in dispute that the said interim relief is operating even till now and has become final. By virtue of the said order the defendants in particular MHADA has been restrained from creating third party rights in the suit property. Indeed, during pendency of the suit some consent terms were tendered before this Court on the basis of which the main proceedings were to be disposed of. However, my predecessor has, by a reasoned order dated 29th June 2007, declined to take the said consent terms on record. It is not necessary for me to go into the details of the reasons recorded in the said order. I am also informed that the said decision is likely to be made subject matter of an appeal to be filed before the Division Bench of this Court.

3. Be that as it may, it is common ground that the interim relief granted by this Court on 23rd April 1997, is still operating and holding the field, which obviously binds the defendants and they are expected to observe the same. It would have been a different matter if the entire suit was to be disposed of on the basis of the consent terms, which request however, has already been declined by the learned Single Judge of this

Court.

4. In my opinion, therefore, the defendants have no legitimate ground not to abide by the interim order dated 23rd April 1997 till the disposal of the suit or till appropriate orders are passed by the Division Bench of this Court on the proposed appeal to be filed by the defendants. Indeed, in the event the defendants were to apply for modification of the order passed on 23rd April 1997, that request will have to be considered on its own merits and the present order would be subject to such order to be passed in those proceedings.

. In other words, the defendants shall abide by the order dated 23rd April 1997 till the same is set aside or modified.

5. This Notice of Motion can be conveniently disposed of on the above basis while making it clear that having regard to the nature of controversy, it is appropriate that the suit itself should proceed expeditiously. Order accordingly.

6. I am informed that there is already an order

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directing expeditious hearing of the suit dated 29th June 2007. In the circumstances, the suit is ordered to be placed under caption "for framing of issues" on 6th September 2007 on which date the parties can present agreed issues on the basis of which the suit will proceed further. It will be open to the defendants to insist for framing of preliminary issue and invite decision thereon in the first instance, if permissible in law. That aspect will be considered on its own merits.

(A.M.KHANWILKAR, J.)